

EXHIBIT

#1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER,

COPY

Debtor, :
BAYONNE MEDICAL CENTER, :
Debtor and :
Debtor-in-Possession; and :
ALLEN D. WILEN, in his :
capacity as Liquidating :
Trustee and Estate :
Representative for the Estate :
of Debtor, Bayonne Medical :
Center, :
DEPOSITION OF:
AVERY EISENREICH
VOLUME I
(Pages 1-187)

Plaintiff, :

-vs-

BAYONNE/OMNI DEVELOPMENT, :
L.L.C., a New Jersey limited :
liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GRUEN & GOLDSTEIN, ESQS.,
1150 West Chestnut Street, Union, New Jersey, on
MONDAY, JULY 26, 2010, commencing at 11:08 a.m.,
pursuant to Notice.

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Court Reporting & Litigation Support Services
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5 (Pages 14 to 17)

Page 14	Page 16
1 Q. And over that 10-year period, did it 2 ever own any real estate? 3 A. It could have, I don't remember. 4 Q. Does it have any assets? 5 A. Yes. 6 Q. What assets does it have today? 7 MR. GRUEN: I'm going to object and 8 I'm going to object for the following reason. This 9 sounds to me, I can't think of any other rationale 10 for it, as pre-judgment asset discovery, to which of 11 course you're not entitled. As far as I know, and 12 you'll correct me if I'm wrong, no claim has been 13 made in this case against Avery Eisenreich based 14 upon the notion that Omni Asset Management was a de 15 facto agent of his, justifying piercing of the 16 corporate veil. So unless I'm missing something, 17 I'm going to instruct the witness not to answer the 18 question. 19 MR. PIZZI: I do not want to engage 20 in colloquy in the presence of the witness. 21 MR. GRUEN: I can excuse him from the 22 room if you'd like. 23 MR. PIZZI: That's fine. You can 24 step out briefly. 25 (Mr. Eisenreich leaves the deposition	1 assets can be nothing other than an effort to 2 determine its ability to satisfy a judgment, when 3 and if a judgement is entered, and that, of course, 4 is not something you're entitled to do now. 5 The fact, and it is a fact, that Connie 6 Tauber testified in answer to your question that 7 Omni Asset Management is a shell and that there's a 8 contradiction here in this testimony where this 9 witness has said that Omni Asset Management has or 10 had assets is irrelevant, because as the case is 11 presently structured, you don't have a claim based 12 upon either thin capitalization or de facto agency 13 under the piercing the veil cases. And, therefore, 14 I just don't see that it comes into the case at this 15 point. 16 MR. PIZZI: I'll just state, not to 17 prolong this, I do not have to bring a claim called 18 "alter ego." There is no such claim to bring, as my 19 understanding of the law is. Piercing is a remedy, 20 it is not a claim. You don't bring a claim to 21 pierce or to alter-ego somebody. So I disagree with 22 you, but I'm going to try it one more time, one 23 other way. But if you're going to instruct him, 24 then we'll move on and we'll make a motion. 25 (Mr. Eisenreich returns to the
Page 15	Page 17
1 room.) 2 MR. PIZZI: I have testimony already 3 on the record that the entity is a shell 4 corporation, and I'm entitled to pursue that, 5 because it goes to the circumstances of fraud, 6 dishonesty relating to instruments signed by this 7 person, among other things. I'm just throwing that 8 out off the top of my head. But based upon the 9 testimony we have already, I am entitled to pursue 10 whether this entity had assets at the time Mr. 11 Eisenreich signed the pledge. 12 MR. GRUEN: So here is why I 13 respectfully disagree with you, and we will be 14 respectful of one another. I would agree with you 15 if there were a claim in this case, and there isn't 16 now, and maybe there will be, but at the moment 17 there isn't a claim in this case that an alter-ego 18 corporation was used to defraud creditors, as a 19 result of which the claimant seeks to pierce the 20 corporate veil. If there were such a claim in the 21 case I would have a different approach to this and a 22 different attitude. But there isn't such a claim in 23 this case now. 24 Since there isn't such a claim in this case 25 now, the inquiry as to Omni Asset Management's	1 deposition room.) 2 Q. What real estate, if any, has Omni 3 Asset Management, L.L.C. owned at any time? 4 A. I wouldn't remember. 5 Q. Do you know for a fact that it ever 6 owned any real estate? 7 A. I really don't remember. 8 Q. So you're not able to remember 9 whether it ever owned real estate, correct? 10 A. I have many entities. Correct, I 11 don't know what it owned. 12 Q. I'm asking about this one entity, 13 sir. 14 A. I don't remember. 15 Q. Can you tell us if it ever owned 16 anything? 17 A. It owned things. 18 Q. Can you tell us anything it ever 19 owned? 20 MR. GRUEN: This is where I'm going 21 to reassert the objection and instruct the witness 22 not to answer. 23 Q. Can you tell us if Omni Asset 24 Management, L.L.C. has a bank account? 25 A. Yes.

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WEDNESDAY, JULY 28, 2010, commencing at 10:03 a.m.,
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4 (Pages 197 to 200)

Page 197	Page 199
1 A. I don't think so. 2 Q. And it's not accurate to say that 3 Omni Asset Management, L.L.C. manages real estate; 4 is that true? 5 MR. GRUEN: That's a little bit 6 contorted. 7 Q. Okay. Omni Asset Management, L.L.C. 8 does not manage any real estate, correct? 9 A. It has. It consulted on those 10 nursing home contracts. I think it was Omni, I 11 don't remember which entity. That's all that comes 12 to mind right now. I'm sure there are other ones. 13 Q. You said Omni Asset Management 14 consulted on nursing home contracts. What are you 15 talking about? Is this the Pope John situation? 16 A. Correct. 17 Q. But you said it might have been Omni 18 II, L.L.C., right? 19 A. I said it might have been. 20 Q. What year did that take place? 21 A. '05, '04. 22 Q. Do you recall testifying in a 23 deposition in another case in Camden County in 2008? 24 A. Okay. 25 Q. I'm asking you if you remember	1 MR. GRUEN: Objection. Don't answer 2 the question. 3 Q. I'm going to ask the same question. 4 Did Omni Asset Management have any assets in 2005? 5 MR. GRUEN: Same objection. 6 Q. You can answer. 7 MR. GRUEN: No, I'm directing the 8 witness not to answer the question. 9 MR. PIZZI: We're going to have to 10 get this resolved, so I think we should call Judge 11 Stem and have this out, because I'm entitled to 12 know what assets Omni Asset Management had in 2005 13 with which to fulfill the pledge. 14 MR. GRUEN: I'm available. 15 MR. PIZZI: I think we should go off 16 the record for a minute. 17 (At this point in the proceedings, 18 a brief recess is taken.) 19 Q. A few more questions about Omni, Mr. 20 Eisenreich. Why was Omni Asset Management formed? 21 A. Omni Asset Management was formed, 22 actually, it's the company that negotiates contracts 23 or just negotiates various business deals with 24 potential sellers. And it's something that the 25 employees know the facilities, that they belong to a
Page 198	Page 200
1 testifying in 2008 in a case in Camden County? 2 A. I might have. 3 Q. Cassabon, does that sound familiar? 4 A. I remember the name. 5 Q. Do you remember saying then that Omni 6 Asset Management, L.L.C. never managed real estate? 7 A. I might have. 8 Q. Was that true then? 9 A. I still didn't say it does. I don't 10 remember which entity it was. 11 Q. As of 2008 was it a correct statement 12 that Omni Asset Management, L.L.C. does not have 13 anything? 14 A. As of 2008 forward? 15 Q. No. As of that time, 2008. 16 A. I don't know. 17 Q. Do you know if Omni Asset Management, 18 L.L.C. had anything in 2008? 19 A. Yes. 20 Q. It did? 21 A. Yes. 22 Q. What did it have in 2008? 23 A. Assets. 24 Q. What assets? 25 A. Cash.	1 system. They know each facility is a standalone 2 facility, but they just belong to a larger group of 3 facilities if they need help. 4 Q. You said what Omni does is it 5 negotiates various contracts and deals. So I 6 understand that's what it does or has done. But my 7 question is when it was formed, why was it formed? 8 Do I understand the second part of your answer to be 9 it was formed so the employees know they're part of 10 a system? 11 A. No, first it was the first answer. 12 Q. So it was formed to negotiate various 13 deals and contracts with sellers; is that right? 14 A. Right. 15 Q. And was it also formed so employees 16 know they're part of a system? 17 A. No, that came years later. 18 Q. And though it negotiates various 19 contracts and deals with sellers, it has no 20 employees and has never entered into a contract with 21 any seller; is that true? 22 A. No. 23 Q. What assets has it ever had? 24 MR. GRUEN: Object to the question. 25 It's the same question that you put before. I'm

3 (Pages 193 to 196)

Page 193	Page 195
1 A. I think it did. 2 Q. What did it do and for whom? 3 A. I don't remember what entity. It 4 might have done some consulting services. 5 Q. You don't know if it was that entity, 6 is that what you're saying? 7 A. Correct. 8 Q. So you don't remember if Omni Asset 9 Management rendered any services at any time? 10 A. It might have done consulting 11 services at the time I said. 12 Q. But if it never had any employees, 13 tell us how it rendered consulting services? 14 A. It might not have been that entity, I 15 don't know. 16 Q. So did you have an entity that 17 rendered consulting services? 18 A. Yes. 19 Q. Is that ATE Consulting? 20 A. No. 21 Q. What is the entity that renders 22 consulting services? 23 A. It might have been a different Omni. 24 Q. Is it an Omni that has jural 25 existence?	1 A. I don't know. 2 Q. Omni II is not a d/b/a for Omni Asset 3 Management, L.L.C., is it? 4 A. I don't know. I don't think so. 5 Q. So at some point Omni II rendered 6 consulting services to someone? 7 A. I told you, I don't remember if it 8 was Omni Asset or Omni II. 9 Q. So you don't know if Omni Asset 10 Management rendered consulting services and you're 11 not sure if Omni II rendered consulting services, 12 but they may have? 13 A. I don't know which one it was. 14 Q. What consulting services are you 15 talking about? 16 A. Consulting services to various 17 nursing homes. 18 Q. Which nursing homes? 19 A. Pope John Paul Pavilion and Rahway 20 Healthcare. 21 Q. And what were the nature of those 22 services? 23 A. Consulting services. 24 Q. But what were you doing? 25 A. They were consulting for the
Page 194	Page 196
1 MR. GRUEN: I think you'll explain to 2 the witness what "jural existence" means. He 3 shouldn't be expected to know that. 4 Q. I thought you might know. Is it an 5 entity that was formed according to the laws of any 6 state? 7 A. Yes. 8 Q. What is the name of the entity that 9 you think may have rendered consulting services that 10 you're referring to? 11 A. Omni II. 12 Q. Is it Omni I-o-o or Omni II? 13 A. II. 14 Q. Is that an L.L.C.? 15 A. Yes. 16 Q. When was it formed? 17 A. I don't know. 18 Q. Who are the members? 19 A. I actually don't know. 20 Q. Are you a member? 21 A. Yes. 22 Q. And I take it it has no 23 parent/subsidiary kind of relationship to Omni Asset 24 Management, L.L.C., it's just a different entity; is 25 that right?	1 ownership of those nursing homes; management 2 services. It wasn't management, but consulting to 3 the boards of those facilities. 4 Q. Consulting to the boards of those 5 facilities in anticipation or in the hope of getting 6 a management arrangement or something else? 7 MR. GRUEN: Object to the form of the 8 question. You can answer if you understand it. 9 A. I don't know, something else. 10 Q. Who was doing the actual consulting? 11 A. Probably I was. 12 Q. Now, did Omni II have employees? 13 A. I don't know. 14 Q. We know Omni Asset Management never 15 had employees, but you don't know if Omni II had 16 employees? 17 A. Correct. 18 Q. So let's leave that aside. 19 Now, I may have asked you this, and if I 20 did, I apologize, but perhaps you can help clarify. 21 Has Omni Asset Management, L.L.C. ever owned real 22 estate? 23 MR. GRUEN: The question was asked 24 and answered, so I will object to the form. But if 25 you want him to answer it again he will.

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#2

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12 (Pages 42 to 45)

Page 42	Page 44
1 Q. Do you remember anything else of what 2 was said at that meeting? 3 A. That's it. 4 Q. Now, after the meeting did you send a 5 letter? 6 A. I would assume that was the letter I 7 sent. 8 Q. Exhibit P-69? 9 A. Correct. 10 Q. Now, the first paragraph of this 11 letter appears to provide a, "Brief outline of how I 12 envision a transaction between Bayonne Medical 13 Center and Omni Health Systems of New Jersey." Is 14 Omni Health Systems of New Jersey an entity? 15 A. It's a d/b/a. 16 Q. A d/b/a for? 17 A. Omni Asset Management. 18 Q. That first paragraph after the 19 introductory paragraph is headlined "Project," and 20 it talks about subdividing an approximately 21 20,000-square-foot site from the current medical 22 center on Broadway frontage for the purpose of 23 building a 120-bed skilled nursing facility, and 24 18,000 square foot of medical diagnostic space to be 25 leased to Bayonne Medical Center. Could you tell us	1 A. Correct. 2 Q. I see. And that turned out not to be 3 the case? 4 A. Correct. 5 Q. How did you arrive at the 120-bed 6 figure? 7 A. It's what I believed the necessity is 8 in that town, that city. 9 Q. Then you say, "I believe that Omni 10 Asset Management would be the best suited partner 11 for Bayonne Medical Center due to Omni already 12 having over 1,000 patients daily within its 13 healthcare system." Does Omni Asset Management, 14 L.L.C. have a healthcare system? 15 A. No. 16 Q. And did it in June of 2005 have a 17 healthcare system? 18 A. No. 19 Q. Omni Asset Management, I presume it 20 was not true at the time, in June of 2005, that Omni 21 Asset Management had 1,000 patients? 22 A. No, it's what that hospital knew us 23 as. 24 Q. So you must have told them that Omni, 25 in fact, operates a healthcare system, right?
Page 43	Page 45
1 how you arrived at that proposal? 2 A. Putting pieces together from the 3 conversation. They initially assumed it was all one 4 big site, therefore, the 20,000 square feet needed 5 to be subdivided. And piecing together what they 6 needed, I assume, that's the 18,000 square feet of 7 medical diagnostic space. 8 Q. What do you mean "they needed"? 9 A. Piecing together parts of their 10 conversation on what they said needed into the long 11 term on a go-forward basis to service the hospital. 12 Q. So they needed medical diagnostic 13 space, did they tell you that? 14 A. Correct. 15 Q. Why did you need to subdivide a 16 20,000-square-foot site? 17 A. They thought that the Bell building 18 and the other building, I think they called it the 19 Glass building, and the Bell building were one site 20 as part of the hospital site. 21 Q. So why would you need to subdivide? 22 A. In order to accomplish this 23 transaction you would need to subdivide it. 24 Q. In other words, they thought those 25 two buildings were part of the hospital site?	1 A. No. 2 Q. You say the hospital knew you as Omni 3 having a healthcare system, right? 4 A. The hospital made a conclusion that 5 Omni had a healthcare system. 6 Q. And you told them in this letter that 7 Omni had a healthcare system, didn't you? 8 A. It's what the industry knows a group 9 of facilities as. 10 Q. Sir, let's get back to the question. 11 You told Mr. Grywalski that Omni had a 1,000-patient 12 healthcare system, correct? 13 A. No. It says it services 1,000 14 patients daily. 15 Q. And it does not. 16 A. Omni itself, okay. 17 Q. Correct? 18 A. Okay. 19 Q. In 2005 it was not servicing 1,000 20 patients, correct? 21 A. The facilities that Mr. Grywalski 22 knew as Omni serviced over 1,000 patients. 23 Q. We're not talking about what's in Mr. 24 Grywalski's head, we're talking about what's in your 25 letter.

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EXHIBIT
#3

Bayonne Medical Center v Omni-Aaron 4-12-10.txt

1

4 Debtor,

5 ALLEN D. WILEN, : DEPOSITION OF:
6 Plaintiff, :
7 HEATHER J. AARON

81

8 BAYONNE/OMNI. DEVELOPMENT,
9 LLC, et al.,

10 Defendants.

11 *Journal of Health Politics, Policy and Law*, Vol. 33, No. 1, January 2008

13. BEFORE:

14 SHARON B. STOPPIELLO, a Certified Court
15 Reporter and Notary Public of the State of New
16 Jersey, at the offices of DRINKER, BIDDLE & REATH,
17 L.L.P., 500 Campus Drive, Florham Park, New Jersey,
18 on MONDAY, APRIL 12, 2010, commencing at 11:11 a.m.,
19 pursuant to Notice.

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2

2

1 APPEARANCES:

10 Bayonne Medical Center v Omni-Aaron 4-12-10.txt
Q. Did there come a time while you were

11 still there that two vendors were the leading
12 contenders for this skilled nursing facility?

13 A. I remember Omni being a leading
14 contender.

15 Q. Did you understand that both Omni and
16 CareOne were solicited to pledge financial
17 contributions to Bayonne Medical Center?

18 A. Yes.

19 Q. And you don't know whether CareOne
20 actually came through with a pledge, is that your
21 recollection?

22 A. I don't recall that.

23 Q. We know that Omni came through with a
24 pledge, correct?

25 A. Yes.

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□

Heather Aaron - Cross/Pizzi

82

1 Q. Do you know the fact or the role that
2 played in the decision-making as Omni became the
3 leading contender?

4 MR. GRUEN: Objection to form, no
5 foundation.

6 A. Can you explain what you mean?

7 Q. Sure. Was the fact that Omni made
8 this pledge a factor in its selection?

9 A. I believe so, yes.

10 Q. Did Mr. Evans say that to you in
11 words or substance?

12 A. No.
Page 75

Bayonne Medical Center v Omni-Aaron 4-12-10.txt

13 Q. But you had that sense while you were
14 there?

15 A. I think everybody did.

16 Q. Now I'm going to show you a couple of
17 documents. Mr. Gruen asked you questions about
18 Exhibit Brockman-2, which is a confidential pledge
19 form dated October 14, 2005. Do you see that?

20 A. Yes.

21 Q. And the maker of the pledge appears
22 to be something called Bayonne Healthcare
23 Development, L.L.C., right?

24 A. Yes.

25 Q. And then he showed you also a

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353-9880

□

Heather Aaron - Cross/Pizzi

83

1 document that's part of Brockman Exhibit 1, and also
2 Lombardo Exhibit 1, which is a confidential pledge
3 form dated October 21, 2005, and the maker is Omni
4 Asset Management, right?

5 A. Yes.

6 Q. And neither of these documents in the
7 form in which they appear, signed, et cetera, you
8 saw while you were employed with Bayonne Medical
9 Center; is that true?

10 A. I don't recall.

11 Q. You don't recall either way?

12 A. No.

13 Q. I think you gave testimony about the
14 process by which D-22 was prepared.

EXHIBIT
#4

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Page 62	Page 64
1 A. I assume I did. I never really 2 stayed in the hospital for a long period of time. 3 Q. Now, did she give you any pieces of 4 paper when you had this meeting? 5 A. She probably gave me this paper. 6 Q. She probably gave you Exhibit P-70, 7 is that what you're saying? 8 A. Correct. 9 Q. Whose handwriting is on the document 10 other than your signature next to the word 11 "Signature"? 12 A. I assume it's hers or someone from 13 her staff. 14 Q. So when she gave you P-70 it had some 15 handwriting already in it, right? 16 A. That's correct. It's not me. 17 Q. Was there any conversation between 18 you and Ms. Evans where the number \$5,000,000 was 19 discussed? 20 A. It was really a component of my \$35 a 21 square foot for shell space was at the top end of 22 the market. I had to give them some type of 23 buildout allowance, and I had to give them some type 24 of rent abatement in order to get on their feet. 25 40,000 square feet, my income was about 1.4 million	1 this \$100 a square foot? 2 A. Estimation. 3 Q. The answer is yes, she did? 4 A. Oh, yes, it was a \$100 estimation. 5 Q. And did she use the word "rent 6 abatement"? 7 A. I don't know if she used the word 8 "rent abatement." She said the hospital is not 9 going to be generating revenue from those floors 10 while building it out. I think my lease called for 11 rent to start immediately. And she was telling me 12 something to the effect of once they even build it 13 out, until they start generating some revenue. 14 Q. You said your lease called for rent 15 to start immediately. You didn't have a lease 16 drafted as of October 14, 2005, did you? 17 A. No. But it's what the conversation 18 was that my lease would require. 19 Q. What conversation? 20 A. When I was talking to Marv Apsel or 21 anybody else, I said to them many times that my 22 lease would start immediately. It's the only way I 23 would be able to cover my debt service on the 24 building. 25 Q. So she handed you P-70, as you
Page 63	Page 65
1 for my lease, and that gave them the ability to do 2 it. 3 Q. You've just told us your explanation 4 for how you get the \$5,000,000; is that right? 5 A. Correct. 6 Q. Did she say anything to you about the 7 \$5,000,000? 8 A. She said something to the effect that 9 it will cost them at least \$100 a square foot to 10 buildout. 11 Q. So this is something in the meeting 12 that she said to you that you now recall, right? 13 A. With respect to the buildout and the 14 rent abatement. 15 Q. So she said it's going to cost \$100 a 16 square foot to build out; is that right? 17 A. Approximately. 18 Q. How does that connect to the 19 \$5,000,000 figure that's on Exhibit P-70? 20 A. It's \$4,000,000, plus the rent 21 abatement. 22 Q. So 40,000 square feet is two floors 23 of 20,000 square feet? 24 A. Correct. 25 Q. And so you say Ms. Evans came up with	1 recall, during that meeting? 2 A. I don't remember. 3 Q. So she may or may not have handed you 4 P-70 during the meeting? 5 A. She could have. 6 Q. And you say all this conversation 7 about the cost of building out space, all that took 8 place in the conversation with Carrie Evans on or 9 about October 14, 2005, or preceding October 15th, 10 2005? 11 A. The same time frame as the pledge, so 12 it's in that area. 13 Q. Anything else come up in this 14 conversation that you're telling us led to Exhibit 15 P-70? 16 A. A big part of the conversation was 17 what comfort do I have if the lease doesn't get 18 signed. 19 Q. And what did she say? 20 A. To which she said we don't enforce 21 pledges, they're none binding, she carried on about 22 that for a while. And then I said, "Get me a letter 23 from the hospital that it's unenforceable." 24 Q. Now, as I understand it, you're 25 saying she wanted this pledge of money so the

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April 4, 2011

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P.O. Box 1553
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Re: Bayonne Medical Center - Eisenreich

Gentlemen

I am writing to advise you that Mr. Apsel whishes to correct an error in his testimony at the time of his deposition on October 14, 2010. His testimony was conflicting as to whether Mr. Eisenreich had filled in the pledge form in his presence or that Mr. Eisenreich signed it in blank.

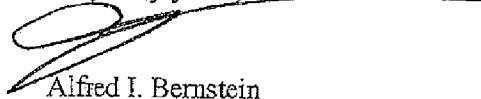
After much thought during the weeks and months since his deposition Mr. Apsel has come to the conclusion that the correct sequence of events was that Mr. Eisenreich signed the pledge form in blank saying to Mr. Apsel that "you guys can fill out the rest." Furthermore, upon Mr. Eisenreich leaving the meeting with Mr. Apsel he requested that Mr. Apsel secure him the letter from Robert Evans with regard to the pledge not being legally binding upon him.

Mr. Apsel further recollects that he gave the signed pledge form to Robert Evans, who then, with Mr. Apsel following along, took the pledge form to Heather Arron. Mr. Apsel recalls that Ms. Arron then filled out the pledge form.

Given the separation of time from the taking of Mr. Apsel's deposition, he now believes that the above information is the accurate account of what transpired.

On behalf of Mr. Apsel I ask that you accept his apology for any inconvenience he may have caused.

Very truly yours,



Alfred I. Bernstein

cc: Marvin Apsel

EXHIBIT

#5

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

COPY

BAYONNE MEDICAL CENTER, :
Debtor and :
Debtor-in-Possession; and :
ALLEN D. WILEN, in his :
capacity as Liquidating :
Trustee and Estate :
Representative for the Estate :
of Debtor, Bayonne Medical :
Center, : DEPOSITION OF:
: AVERY EISENREICH
: VOLUME I
: (Pages 1-187)

Plaintiff, :

-vs-

BAYONNE/OMNI DEVELOPMENT, :
L.L.C., a New Jersey limited :
liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GRUEN & GOLDSTEIN, ESQS.,
1150 West Chestnut Street, Union, New Jersey, on
MONDAY, JULY 26, 2010, commencing at 11:08 a.m.,
pursuant to Notice.

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22 (Pages 82 to 85)

	Page 82	Page 84
1	cost and rent abatement for the lease.	1 And then afterwards you heard from her that the
2	Q. Right. And the lease was part of the	2 dates were wrong, right?
3	transaction, right?	3 A. Correct.
4	A. There was two separate parts of the	4 Q. When you signed it and returned it to
5	transaction. There were a couple of components, a	5 Ms. Evans, you don't know how you did that, right,
6	couple of deals I was doing with them at the time	6 you don't recall how that took place?
7	that ended up evolving, but the lease was one of	7 A. I don't remember.
8	them, yes.	8 Q. You don't remember if it was mailed
9	Q. The pledge was entered into in order	9 or if it was personally delivered or even delivered
10	to make the lease component fly; is that right?	10 the day of its date, October 14, 2005, right?
11	A. Sure. The pledge component gave the	11 A. It wasn't done on October 14, 2005.
12	hospital the ability to build out the space, occupy	12 That was probably the day I got it.
13	the space, and not lose money on it for the first	13 Q. It was signed after you got the
14	year or two.	14 comfort letter, which we're going to talk about in a
15	Q. And the lease was part of making the	15 minute, Exhibit P-62, right?
16	whole transaction fly, right?	16 A. Correct.
17	A. No.	17 Q. And that document has a date of
18	Q. Didn't you want the hospital to lease	18 October 21, 2005. Do you know if you got the
19	space in order for you to recoup the costs of	19 comfort letter after or on the date it was dated?
20	developing the site?	20 A. I don't remember, but I know I got
21	A. It would have been an added benefit.	21 the letter before I signed the first pledge.
22	It's not something that I have in other facilities.	22 Q. In any event, you signed the first
23	Q. So it wasn't a significant part of	23 pledge, you gave it to Ms. Evans or got it to her in
24	this transaction?	24 some way, and you signed it under the name of an
25	A. Evidenced by I closed without it, so	25 entity that did not exist, correct?
	Page 83	Page 85
1	how significant could it have been?	1 A. Correct.
2	Q. Now, Exhibit P-62 --	2 Q. And even though you knew the entity
3	THE WITNESS: Do we get a coffee	3 did not exist, you still signed it, right?
4	break, by the break, at any time? No pressure, I'm	4 A. No, I didn't realize it was the wrong
5	just curious.	5 entity.
6	MR. PIZZI: I'm willing to do	6 Q. You thought you may have formed an
7	whatever you want in terms of a break.	7 entity called Bayonne Healthcare Development,
8	THE WITNESS: I don't need a break.	8 L.L.C.?
9	Just tell me when I could look forward to a coffee.	9 A. No. I actually thought it was the
10	MR. PIZZI: Off the record.	10 entity that was going to purchase the land from the
11	(At this point in the proceedings,	11 hospital.
12	a lunch recess is taken, whereupon a letter	12 Q. This was the entity that was to be
13	dated 2/12/09 from Richard B. Honig to	13 the joint venture between the hospital and you?
14	Stephen V. Falanga and an e-mail dated	14 A. Correct, or the purchaser of the
15	2/13/09 from Barbara Johnson on behalf of	15 land, right.
16	Richard B. Honig to Avery Eisenreich and	16 Q. So you thought the entity that was
17	Fred Gruen are received and marked P-77 and	17 going to be the obligor on this pledge was actually
18	P-78 for identification by the Reporter.)	18 going to be an entity that the hospital would have
19	MR. PIZZI: It's 1:57, we're back on	19 an interest in, is that what you're telling us?
20	the record.	20 A. Okay, you can look at it that way,
21	Q. You told us that you signed the	21 but I wasn't thinking of it that way at all.
22	document marked as P-70 and delivered that back to	22 Q. Well, back in June of 2005 you talk
23	Ms. Evans, right?	23 about an entity holding the real estate in which the
24	A. Correct.	24 hospital would have an interest, right?
25	Q. And that's the October 14th pledge.	25 A. Correct.

EXHIBIT
#6

Bayonne Medical Center v Omni-Aaron 4-12-10.txt

1

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF NEW JERSEY
3 CASE NO. 07-15195(MS)
4 CHAPTER 11
5
6 In re BAYONNE MEDICAL CENTER, :
7 Debtor, :
8 ALLEN D. WILEN, : DEPOSITION OF:
9 Plaintiff, : HEATHER J. AARON
10 -VS- :
11 BAYONNE/OMNI DEVELOPMENT, :
12 LLC, et al., :
13 Defendants.

13 B E E O R E

14 SHARON B. STOPPIELLO, a Certified Court
15 Reporter and Notary Public of the State of New
16 Jersey, at the offices of DRINKER, BIDDLE & REATH,
17 L.L.P., 500 Campus Drive, Florham Park, New Jersey,
18 on MONDAY, APRIL 12, 2010, commencing at 11:11 a.m.,
19 pursuant to Notice.

20

21

22

23

24

25

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1

2

1 APPEARANCES:
Page 1

2 Bayonne Medical Center v Omni-Aaron 4-12-10.txt
3 A. The question is understandable for
4 the 5,000,000 of unrestricted. But you're asking me
5 to give an answer for something that has to be
6 standard. In order for me to book \$5,000,000, the
7 million has to come in June 1.

8 MR. FROST: Heather, I'm going to
9 instruct you to listen to his question very
10 carefully and answer the question he's asking. But
11 just let me him reask it and answer the question
12 he's asking.

13 Q. Maybe I can ask it a different way
14 and it will make you more comfortable.

15 A. No, I'll answer your question from
16 the best I can remember.

17 MR. FROST: Heather, please stop.
18 There's no question pending. Please don't answer
19 anything that's not pending. Listen to his question
20 and only answer what he asks.

21 THE WITNESS: Okay.

22 Q. Was Robert Evans also the source of
23 the information for the installment payment dates
24 that are set forth on this document?

25 A. No.

Q. Did you discuss with Robert Evans the

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□

DepoLink Court Reporting & Litigation Support Services (973)

Heather Aaron - Direct/Gruen

41

1 payment dates that are set forth on this document?

2 A. Yes.

3 Q. Did you discuss with Robert Evans

4 before this confirmation letter was sent to Omni the
Page 37

Bayonne Medical Center v Omni-Aaron 4-12-10.txt

5 installment payment dates that are shown in this
6 letter?

7 A. Yes.

8 Q. Did you discuss with anyone other
9 than Robert Evans the installment dates that are set
10 forth in this letter?

11 A. Yes, the entire accounting
12 department.

13 Q. That's what I wanted to get to. That
14 would include Mr. Olson; is that correct?

15 A. Mr. Olson is with Withum, Smith &
16 Brown.

17 Q. Oh, when you say the "accounting
18 department" --

19 A. I mean Paul Mohrle and his staff.

20 Q. I beg your pardon.

21 So what did you discuss with Paul Mohrle and
22 his accounting staff with respect to the installment
23 payment dates that are shown in this letter?

24 A. The correct accounting procedure
25 necessary to collect these funds and when they would

DepoLink Court Reporting & Litigation Support Services (973)

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□

Heather Aaron - Direct/Gruen

42

1 have to be due. That's what I'm talking about, the
2 \$5,000,000 and the dates.

3 Q. So what, if anything, did Mohrle say
4 about the dates that had to be shown on here in
5 order to serve your accounting purposes?

6 A. These were the dates that needed to

7 Bayonne Medical Center v Omni-Aaron 4-12-10.txt
7 be documented for the dollars. These are the dates
8 that we needed to collect the funds in order to have
9 it correctly booked.

10 Q. What does "correctly booked" mean?

11 A. May I give an example? "Correctly
12 booked" means that for 2005 we have a pledge that
13 came in. In order to book the dollars as a
14 receivable in 2005, the cash must shortly follow,
15 before the end of the preceding year, or else you
16 cannot recognize it on your books.

17 Q. By "the cash," you mean the entire
18 pledge or a part of the pledge?

19 A. A part of it. You know, it's over a
20 period of time.

21 Q. So the dates that were reflected in
22 this letter resulted from a conversation that you
23 had with Mohrle?

24 A. The dates here?

25 Q. Yes.

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□

Heather Aaron - Direct/Gruen

43

1 A. Yes.

2 Q. And it was he, then, who told you
3 what dates should show on the confirmation letter?

4 A. He did. The year-end audit was being
5 done, the accounting, Withum, Smith & Brown,
6 everybody discussed what should be the appropriate
7 collection of these dollars.

8 MR. FROST: Again, Heather, listen
9 very carefully to his question.

Bayonne Medical Center v Omni-Aaron 4-12-10.txt

10 Q. So who at WSB did you discuss these
11 installment payment dates as reflected on this
12 letter?

13 A. Mr. Olson.

14 Q. Anyone else?

15 A. Not that I know of.

16 MR. PIZZI: Just to clarify for the
17 record, the name is Oster.

18 THE WITNESS: Oster.

19 MR. PIZZI: According to Exhibit P-22
20 to the Brockman deposition. We might as well start
21 using the correct name, if that's it. The bottom
22 left-hand corner, William Oster. You have it right
23 there. After signing and dating your reply.

24 THE WITNESS: Yes.

25 MR. PIZZI: Thank you.

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44

1 MR. FROST: Just to clarify --
2 THE WITNESS: Just to make sure who
3 we're talking about.

4 MR. FROST: -- the person we have
5 been identifying as "olson" is Oster.

6 THE WITNESS: Yes, O-s-t-e-r.

7 Q. So tell me everything you can
8 remember about your conversations with William Oster
9 with respect to setting forth these installment
10 payment dates on this letter.

11 A. We had a conversation where we

12 Bayonne Medical Center v Omni-Aaron 4-12-10.txt
13 verified that this is when we expected the dollars
14 to come in, and this is what's being sent out to be
15 verified by Omni.

16 Q. Upon what did you base your
17 expectation that these were the dates that the
18 payments were going to be coming in?

19 A. Based on what's acceptable through
the accounting process.

20 Q. And nothing else?

21 A. Nothing else.

22 MR. FROST: Fred, do you mind if I
23 ask a quick question here to help? I think I can
24 get you what you're looking for.

25 MR. GRUEN: Okay.

DepoLink Court Reporting & Litigation Support Services (973)

353-9880

Heather Aaron - Direct/Gruen 45

1 MR. FROST: Who actually came up with
2 these dates? Where did these particular dates come
3 from?

4 MR. GRUEN: I think the witness has
5 already answered that, but if she wants to give an
6 answer to your question, I have no objection.

7 THE WITNESS: In collaboration with
8 my finance department and what is acceptable.

9 MR. FROST: I just wanted to clarify
10 the record on that point.

11 Q. The second page of this letter that
12 we're looking at now, D-22, do you remember seeing
13 this before today?

14 MR. FROST: Again, I instruct her not
Page 41

EXHIBIT

#7

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

COPY

BAYONNE MEDICAL CENTER, :
Debtor and
Debtor-in-Possession; and :
ALLEN D. WILEN, in his : DEPOSITION OF:
capacity as Liquidating :
Trustee and Estate :
Representative for the Estate :
of Debtor, Bayonne Medical :
Center, :
VOLUME I
(Pages 1-187)

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :
L.L.C., a New Jersey limited :
liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of GRUEN & GOLDSTEIN, ESQS.,
1150 West Chestnut Street, Union, New Jersey, on
MONDAY, JULY 26, 2010, commencing at 11:08 a.m.,
pursuant to Notice.

DepoLink
Court Reporting & Litigation Support Services
Phone (973) 353-9880 Fax. (973) 353-9445
www.depolinklegal.com

Page 82	Page 84
1 cost and rent abatement for the lease. 2 Q. Right. And the lease was part of the 3 transaction, right? 4 A. There was two separate parts of the 5 transaction. There were a couple of components, a 6 couple of deals I was doing with them at the time 7 that ended up evolving, but the lease was one of 8 them, yes. 9 Q. The pledge was entered into in order 10 to make the lease component fly; is that right? 11 A. Sure. The pledge component gave the 12 hospital the ability to build out the space, occupy 13 the space, and not lose money on it for the first 14 year or two. 15 Q. And the lease was part of making the 16 whole transaction fly, right? 17 A. No. 18 Q. Didn't you want the hospital to lease 19 space in order for you to recoup the costs of 20 developing the site? 21 A. It would have been an added benefit. 22 It's not something that I have in other facilities. 23 Q. So it wasn't a significant part of 24 this transaction? 25 A. Evidenced by I closed without it, so	1 And then afterwards you heard from her that the 2 dates were wrong, right? 3 A. Correct. 4 Q. When you signed it and returned it to 5 Ms. Evans, you don't know how you did that, right, 6 you don't recall how that took place? 7 A. I don't remember. 8 Q. You don't remember if it was mailed 9 or if it was personally delivered or even delivered 10 the day of its date, October 14, 2005, right? 11 A. It wasn't done on October 14, 2005. 12 That was probably the day I got it. 13 Q. It was signed after you got the 14 comfort letter, which we're going to talk about in a 15 minute, Exhibit P-62, right? 16 A. Correct. 17 Q. And that document has a date of 18 October 21, 2005. Do you know if you got the 19 comfort letter after or on the date it was dated? 20 A. I don't remember, but I know I got 21 the letter before I signed the first pledge. 22 Q. In any event, you signed the first 23 pledge, you gave it to Ms. Evans or got it to her in 24 some way, and you signed it under the name of an 25 entity that did not exist, correct?
Page 83	Page 85
1 how significant could it have been? 2 Q. Now, Exhibit P-62 -- 3 THE WITNESS: Do we get a coffee 4 break, by the break, at any time? No pressure, I'm 5 just curious. 6 MR. PIZZI: I'm willing to do 7 whatever you want in terms of a break. 8 THE WITNESS: I don't need a break. 9 Just tell me when I could look forward to a coffee. 10 MR. PIZZI: Off the record. 11 (At this point in the proceedings, 12 a lunch recess is taken, whereupon a letter 13 dated 2/12/09 from Richard B. Honig to 14 Stephen V. Falanga and an e-mail dated 15 2/13/09 from Barbara Johnson on behalf of 16 Richard B. Honig to Avery Eisenreich and 17 Fred Gruen are received and marked P-77 and 18 P-78 for identification by the Reporter.) 19 MR. PIZZI: It's 1:57, we're back on 20 the record. 21 Q. You told us that you signed the 22 document marked as P-70 and delivered that back to 23 Ms. Evans, right? 24 A. Correct. 25 Q. And that's the October 14th pledge.	1 A. Correct. 2 Q. And even though you knew the entity 3 did not exist, you still signed it, right? 4 A. No, I didn't realize it was the wrong 5 entity. 6 Q. You thought you may have formed an 7 entity called Bayonne Healthcare Development, 8 L.L.C.? 9 A. No. I actually thought it was the 10 entity that was going to purchase the land from the 11 hospital. 12 Q. This was the entity that was to be 13 the joint venture between the hospital and you? 14 A. Correct, or the purchaser of the 15 land, right. 16 Q. So you thought the entity that was 17 going to be the obligor on this pledge was actually 18 going to be an entity that the hospital would have 19 an interest in, is that what you're telling us? 20 A. Okay, you can look at it that way, 21 but I wasn't thinking of it that way at all. 22 Q. Well, back in June of 2005 you talk 23 about an entity holding the real estate in which the 24 hospital would have an interest, right? 25 A. Correct.